

Serial No.: 10/053,283

Attorney Docket No.: 01P19665US

**DRAWINGS**

**Amendments to the Drawings:**

A set of formal drawings is attached.

Attachment: Replacement Drawings

**REMARKS**

Upon entry of the instant Amendment, Claims 1-5, 7-9, and 11-16 are pending. Claims 1, 2, 5, 9, 13 and 14 have been amended to more particularly point out Applicants' invention.

The drawings were objected to as being informal. Applicants enclose herewith formal drawings. As such, Applicants submit that the objection is obviated.

Claims 1-5, 7-9, and 11-16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes, U.S. Patent No. 5,754,622 ("Hughes") in view of Smith. Applicants respectfully submit that the claimed invention is not taught, suggested, or implied by Hughes or Smith, either singly or in combination.

**Claims 1, 2, 5, 9, 13, and 14:**

As discussed in the specification, a portal imaging device positioning apparatus according to an embodiment of the present invention includes a portal imaging device positioner attachable to a support such as a telescoping boom. The portal imaging device positioner is adapted to vertically adjust an imaging panel in a either a treatment or dosimetry mode to receive radiation that has passed through a body in the patient plane, and adjust the panel in a physics mode or characterization mode to receive radiation at the patient plane. Thus, Claims 1, 2, 5, 9, 13, and 14 have been amended to recite that a second mode in which the portal imaging device is positioned in a patient plane is a "characterization mode."

In contrast, Hughes provides a radiation therapy device including a portal imaging device 90 that is substantially fixed vertically. Smith provides an x-ray detector 34 supported by an arm 30/112 for use in a diagnostic system. Neither reference, however, relates to a "portal imaging device positioner [that] maintains said imaging panel to receive radiation substantially at said patient plane in a characterization mode."

As noted above, Hughes provides an essentially fixed device; thus, Hughes does not even appear to recognize the desirability of positioning the device in a patient plane.

Smith relates to a diagnostic imaging system and thus has nothing to do with characterization. As such, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims.

Claims 3, 7, 11, 15:

These claims relate to a specific manner of positioning an imaging device. Claim 3, for example, recites a “mounting cavity” and “wherein said vertical drive unit is adjustable in said first mode such that a top of said support is substantially adjacent a top of said mounting cavity, and adjustable in said second mode such that a bottom of said support is substantially adjacent a bottom of said mounting cavity.”

In contrast, neither Smith nor Hughes appear to have anything remotely related to such a configuration. Hughes provides a portal imaging device that appears substantially fixed with regard to the vertical; and Smith provides a diagnostic imaging device having nothing to do with a “mounting cavity,” as generally recited in the claims at issue.

Indeed, the Official Action acknowledges such, stating the references do “not disclose that the vertical drive unit is adjustable in the first mode such that a top of the support is substantially adjacent to the top of the mounting cavity and adjustable in the second mode such that the bottom of the support is substantially adjacent the bottom of the mounting cavity.” Thus, Applicants respectfully submit that the assertion that such a configuration “would have been obvious” smacks of an improper hindsight reconstruction “wherein that which only the inventor taught is used against its teacher.” *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983). As such, the Examiner is respectfully requested to reconsider and withdraw the rejection of the claims.

For all of the above reasons, Applicants respectfully submit that the application is in condition for allowance, which allowance is earnestly solicited.

Respectfully requested,

SIEMENS CORPORATION

By:   
Jenny G. Ko  
Registration No.: 44,190  
Attorney for Applicant(s)  
Tel.: 650-694-5180  
Fax: 650-968-4517

Date: 1/20/04

SIEMENS CORPORATION  
Intellectual Property Department  
170 Wood Avenue South  
Iselin, New Jersey 08830  
ATTENTION: Elsa Keller, Legal Department  
Telephone: (732) 321-3026